

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

KENNETH G. MIDDLETON,

Appellant

v.

STATE OF MISSOURI.

Respondent

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DOCKET NUMBER WD75669

DATE: MARCH 4, 2014

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Edith Messina, Judge

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Appellate Judges:

Division One  
Alok Ahuja, P.J., Thomas H. Newton, Anthony Rex Gabbert, J.J.

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Attorneys:

Shaun Mackelprang, Jefferson City, MO, Counsel for Respondent,

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Attorneys:

Kent E. Gipson, Kansas City, MO, Counsel for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**KENNETH G. MIDDLETON, Appellant, v.  
STATE OF MISSOURI, Respondent**

**WD75669**

**Jackson County**

Before Division One Judges: Alok Ahuja, P.J., Thomas H. Newton, Anthony Rex Gabbert, J.J.

Kenneth G. Middleton appeals the circuit court's judgment denying his second motion to reopen his Rule 29.15 post-conviction proceeding. Middleton contends that the circuit court clearly erred in denying his motion and in declining to address the merits of the underlying claims because: (1) the State agreed to reopen the case in 2004 and, therefore, waived any defenses to reopening the case and is judicially stopped from changing its position; (2) the evidence established that he was abandoned by both his appointed and retained 29.15 counsel and that retained counsel was ineffective; (3) trial and appellate counsel, Robert Duncan, acted in concert with retained 29.15 counsel Gerald Handley, and labored under an actual conflict of interest that constituted abandonment of counsel, and (4) retained 29.15 motion court counsel committed a fraud upon the court by presenting a fraudulent verification to Middleton's amended 29.15 motion and coerced Middleton to participate in this fraudulent act which constituted abandonment of counsel.

**AFFIRMED**

**Division One holds:**

(1) The circuit court did not clearly err in denying Middleton's motion to reopen his Rule 29.15 proceeding as the State did not agree to reopen Middleton's case when it drafted findings and conclusions that reflected the court's previously determined position.

(2) The circuit court did not clearly err in denying Middleton's motion to reopen his Rule 29.15 proceeding as Middleton was not abandoned by appointed or retained counsel.

(3) The circuit court did not clearly err in denying Middleton's motion to reopen his Rule 29.15 proceeding as there is no evidence in the record of a conflict of interest between trial and appellate counsel that constituted abandonment of counsel.

(4) The circuit court did not clearly err in denying Middleton's motion to reopen his Rule 29.15 proceeding as Middleton's participation in a fraud upon the court does not warrant reopening his case and Middleton otherwise fails to prove that any potential fraud upon the court by counsel resulted in abandonment.

Opinion by Anthony Rex Gabbert, Judge

Date: March 4, 2014

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